

**Agreement between
the Government of India and
the Government of the United States of America Concerning
the Transboundary Movement of Glass Cullet Containing
Mercury from India to the United States of America**

The Government of India refers to the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, adopted at Basel on March 22, 1989 (hereinafter referred to as "the Basel Convention"), to which India is a Party.

Noting that the United States of America (hereinafter referred to as "the United States" or "U.S.") is not at present a Party to the Basel Convention and that Article 4 paragraph 5 of the Basel Convention provides that a Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party, the Government of India wishes to propose that the Governments of India and the United States enter into an agreement pursuant to Article 11 paragraph 1 of the Basel Convention. Article 11 paragraph 1 provides that notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by the Basel Convention, and that such agreements or arrangements stipulate provisions which are not less environmentally sound than those provided for by the Basel Convention in particular taking into account the interests of developing countries.

To this end, the Government of India and the United States have consented to enter into this agreement containing the following terms and conditions to govern the transboundary movement(s) of hazardous waste glass cullet containing mercury from India to the United States.

Article 1
General Obligation

With regard to the transboundary movement(s) of the glass cullet containing mercury undertaken pursuant to this agreement, India shall comply with the provisions of the Basel Convention as well as the provisions of this agreement.

Article 2
Notification and Consent

1. The competent authority of India, which for the purposes of this agreement is the Ministry of Environment and Forests (MoEF), shall notify, in writing, the competent authority of the United States, which for the purposes of this agreement is the Environmental Protection Agency (EPA), of the proposed transboundary movement(s) of glass cullet containing mercury to be carried out pursuant to this agreement. This notice shall contain the declarations and information specified in Annex V A of the Basel Convention. If any information in the notice changes, then a new notice shall be provided.
2. The EPA shall, in accordance with applicable U.S. law, respond to MoEF in writing, consenting to the transboundary movement(s) with or without conditions, denying permission for the transboundary movement(s), or requesting additional information. EPA shall seek to respond within 30 days of receipt of the notice.
3. EPA's consent, including conditional consent, may be withdrawn or modified for good cause; in such case, EPA shall notify MoEF as soon as possible.
4. India shall not allow a transboundary movement of glass cullet containing mercury to commence until:
 - (a) MoEF has received confirmation from the exporter of the existence of a contract between the exporter and the intended facility in the United States specifying:
 - (i) The environmentally sound management of the glass cullet containing mercury, (which is satisfied by specifying that it will be

managed in accordance with applicable U.S. laws); and

(ii) Alternative arrangements, including which party to the contract is to pay for alternative arrangements, for the proper management in an environmentally sound manner of the glass cullet containing mercury in the United States or India, in the case where the intended facility cannot or will not accept it; and,

(b) MoEF has received from EPA written consent to the transboundary movement(s).

5. India shall not allow a transboundary movement to commence if it has reason to believe that glass cullet containing mercury will not be managed in an environmentally sound manner.
6. The management of the glass cullet containing mercury once subject to the jurisdiction of the United States, pursuant to this agreement, shall be subject to applicable U.S. law.

Article 3 Cooperative Efforts

1. India and the United States shall cooperate to ensure, to the extent possible, that the transboundary movements(s) of glass cullet containing mercury complies with applicable tracking documents and manifest requirements.
2. India and the United States shall cooperate to ensure, to the extent possible, that the transboundary movement(s) of glass cullet containing mercury conforms to the requirements of applicable law and to this agreement.

Article 4 Duty to Re-import

If the transboundary movement(s) of glass cullet containing mercury can not be completed in accordance with the terms of the contract, even if EPA's consent has been obtained, India shall ensure that the glass cullet containing mercury is taken back to India by the exporter, or, if necessary, by itself, if alternative arrangements cannot be made for it's management in an

environmentally sound manner, within ninety days from the time EPA has so informed MoEF.

Article 5
Illegal Traffic

1. If the transboundary movement(s) of glass cullet containing mercury is not in accordance with this agreement as a result of conduct on the part of the exporter, India shall ensure that the glass cullet containing mercury is taken back to India by the exporter, or, if necessary, by itself, to India, or, if impracticable, is managed pursuant to the provisions of the Basel Convention, within thirty days from the time India has been informed about the illegal transboundary movement or such other period of time to which India and the United States may agree. To this end, India and the United States shall not oppose, hinder, nor prevent the return of the glass cullet containing mercury to India.
2. If the transboundary movement(s) of glass cullet containing mercury is not in accordance with this agreement as a result of conduct on the part of the importer, the United States shall take appropriate enforcement measures to require the importer to manage the glass cullet containing mercury in an environmentally sound manner as soon as feasible from the time the illegal transboundary movement has come to the attention of the United States. To this end, India and the United States shall cooperate, as necessary, in the management of the glass cullet containing mercury by the importer in an environmentally sound manner.
3. In the case where responsibility for the illegal transboundary movement(s) cannot be assigned either to the exporter or to the importer, India and the United States shall cooperate to ensure that the glass cullet containing mercury is managed as soon as possible in an environmentally sound manner.

Article 6
Insurance

The United States may require, as a condition of entry, that any import of glass cullet containing mercury be covered by insurance or other financial guarantee in respect of damage caused during any part of the entire

movement of glass cullet containing mercury, including loading and unloading, and in case alternative arrangements for it's management in an environmentally sound manner or it's return to India are necessary.

Article 7
Amendment

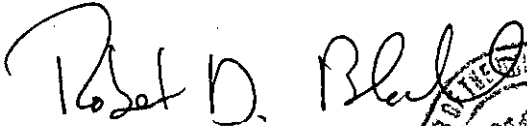
This agreement may be amended by written consent of India and the United States.

Article 8
Entry into Force and Termination

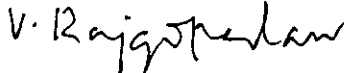
This agreement shall enter into force upon signature by both parties and shall remain in force for one year from the later date of signature or until the transboundary movement(s) of the glass cullet containing mercury is complete, whichever is earlier. Either Party may terminate this agreement upon written notification, such termination to take effect two months following the date of notification.

In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed this agreement.

Done in duplicate at New Delhi this Ninth day of October 2002.


FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA




FOR THE GOVERNMENT OF INDIA
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